



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 So. Nimitz Hwy., Honolulu, Hawaii 96813-4898

PLS 12.0092

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

HAR-PM
5383.12

July 28, 2011

Mr. Jim Cook
Pacific Ocean Producers, LLC
1133 N. Nimitz Highway
Honolulu, Hawaii 96817

Dear Mr. Cook:

**Subject: Request for Waiver of Performance Bond Requirement, Harbor Lease
No. H-03-18, Unit FV2, Domestic Commercial Fishing Village, Pier 38,
Honolulu Harbor, Island of Oahu**

This is in response to your request for a waiver of the performance bond requirement for the subject lease. We acknowledge your company's substantial financial investment in the construction of improvements for which a rental waiver of one (1) year was provided. A review of your lease payment history indicates that past payments were received on a timely basis and your account is current.

In accordance with Paragraph 46 of the subject lease, "Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion, may waive or suspend the performance bond and/or improvement bond requirement, or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond in and to their original tenor and form at any time throughout the term of this lease."

In view of your good credit history and completion of improvements, the division feels that reducing the amount required under the performance bond requirement to equal one quarter of the annual rental amount then owed is in order. In keeping with Paragraph 46 of the lease, the bond amount shall be automatically restored to its original annual requirement if there is a violation of any term or condition of the lease, including a failure to keep rental payments current.

ITEM M-2

Mr. Jim Cook
July 28, 2011
Page 2

HAR-PM
5383.12

Please indicate your acceptance below of the conditions for the proposed reduction in the performance bond amount and return a signed copy of this letter. Upon receipt of your acceptance we will proceed to request the approval of the Board of Land and Natural Resources. The enclosed copy may be kept for your records.

Please contact Ms. Patti Miyashiro, Property Manager, at 587-1942 if there are any questions.

Sincerely,



RANDY GRUNE
Deputy Director, Department of Transportation
Harbors Division

ACCEPT ☒ DO NOT ACCEPT ☐

PACIFIC OCEAN PRODUCERS, LLC

By

Its

Enc.

Date

7-30-11



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

December 15, 2000

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

ISSUANCE OF A LEASE BY DIRECT NEGOTIATION AT PIER 38,
HONOLULU HARBOR, OAHU

LEGAL REFERENCE:

Section 171-11, 16(c), 17, 33, 35, 36, 41, and 59(b), Hawaii Revised Statutes.

APPLICANT:

Pacific Ocean Producers, Inc.

LOCATION:

Pier 38, Kapalama, Honolulu Harbor, Oahu, being Lot 2 of the Domestic Commercial Fishing Village, also being a portion of Parcel 6 of Tax Map Plat 1st/1-5-42, as shown on the attached Exhibit "A."

AREA:

Approximately 27,882 square feet.

CURRENT USE STATUS:

Pending Governor's Executive Order to be issued to the Harbors Division, Department of Transportation.

ZONING:

State Land Use Commission: Urban
City and County of Honolulu: I-3 (Waterfront Industrial)

LAND TITLE STATUS:

Subsection 5(a) of the Hawaii Admission Act, non-ceded.

Approved by the Board
at its meeting held on

12/15/00 ALB

ITEM K-3

TERM: Thirty-five (35) years, the commencement date to be determined by the Director of Transportation.

CHARACTER OF

USE: Construction, installation, operation, use, maintenance and repair of improvements necessary for the storage, processing and wholesale distribution of seafood products, fishing gear and ancillary uses.

CHAPTER 343, OEQC REQUIREMENTS:

The Harbors Division had both Draft and Final Environmental Assessments done for the Commercial Fishing Village Project, and a Finding of No Significant Impact was found for the project in June of 1998. The subject lease falls under the aforestated Environmental Assessments.

LEASE RENTAL:

Subject to the waiver of lease rental provided below, the annual lease rental for the first twenty-five (25) years of the lease term, as determined by independent appraisal, shall be as follows:

Years 1 through 5	\$78,069.00
Years 6 through 10	\$89,779.00
Years 11 through 15	\$103,246.00
Years 16 through 20	\$118,733.00
Years 21 through 25	\$136,543.00
Years 26 through 36	Rental Renegotiation

The annual rental for each five (5)-year period for the first twenty-five (25) years of the lease is based on a 115% increase of the last year of the previous five (5)-year period.

METHOD OF PAYMENT:

Quarterly payments, in advance.

WAIVER OF LEASE RENTAL:

The provisions of the lease require the lessee to make substantial improvements to the premises, in an amount not less than \$1,000,000.00, including, without limitation, constructing and installing utility lines, equipment and appurtenances necessary for the purpose of the lease. As a result, the lessee's obligation to pay rent to the State during the period of such construction shall be waived for a period not to exceed one year, and the waiver of rental shall terminate as of the date the lessee occupies the premises and commences operations.

RENTAL REOPENING:

The annual rental shall be reopened and redetermined at the end of the twenty-fifth (25th) year of the lease term. Independent appraiser(s) retained for such redetermination shall also determine a total overall appreciation rate to be applied on the latter five-year periods of the last ten-year period, which rate shall not be less than fifteen percent (15%).

REMARKS: The lease, by direct negotiation rather than by public auction, is appropriate in this instance in order to provide the applicant a facility wherein they would be able to continue the close association necessary for convenient and efficient processing of fresh fish. Concurrent to this objective is the desire to consolidate major commercial fishing activities in a modern and more efficient environment where the complete range of seafood processing can be accomplished.

This lease for Lot 2 of the Pier 38 Domestic Commercial Fishing Village will be submitted to the Department of the Attorney General for review and approval as to form.

RECOMMENDATION:

That the Board:

1. Find the Area to be an economic unit in terms of the intended use.
2. Approve the lease by direct negotiation covering the subject area for the stated purpose, subject to the following terms and conditions:
 - a. Standard minerals reservations.
 - b. Standard indemnity and hold-harmless clause.
 - c. All building construction shall be in full compliance with all laws, rules, and regulations of the Federal, State, and County governments applicable thereto, and in accordance with plans and specifications submitted by lessee to, and approved by, the Director of Transportation prior to construction.
 - d. Standard liability insurance clause.
 - e. The lessee accepts the property in an "as is" condition.
 - f. Standard withdrawal clause.

- g. Standard hazardous materials clause.
- h. Standard assignment premium clause.
- i. Standard sublease clause with the standard sublease premium clause.
- j. Other terms and conditions of the standard lease document, unless modified above, and such other terms and conditions as may be prescribed by the Director of Transportation.

Respectfully submitted

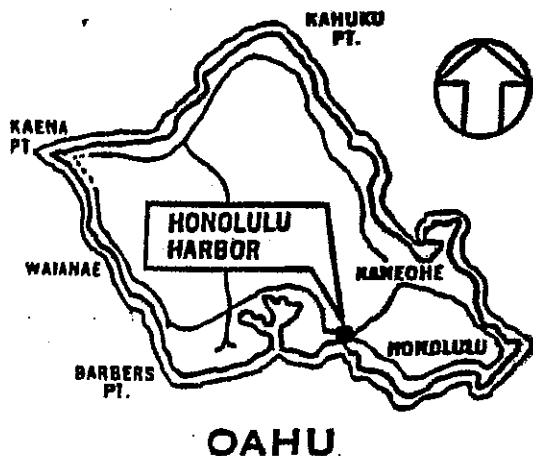
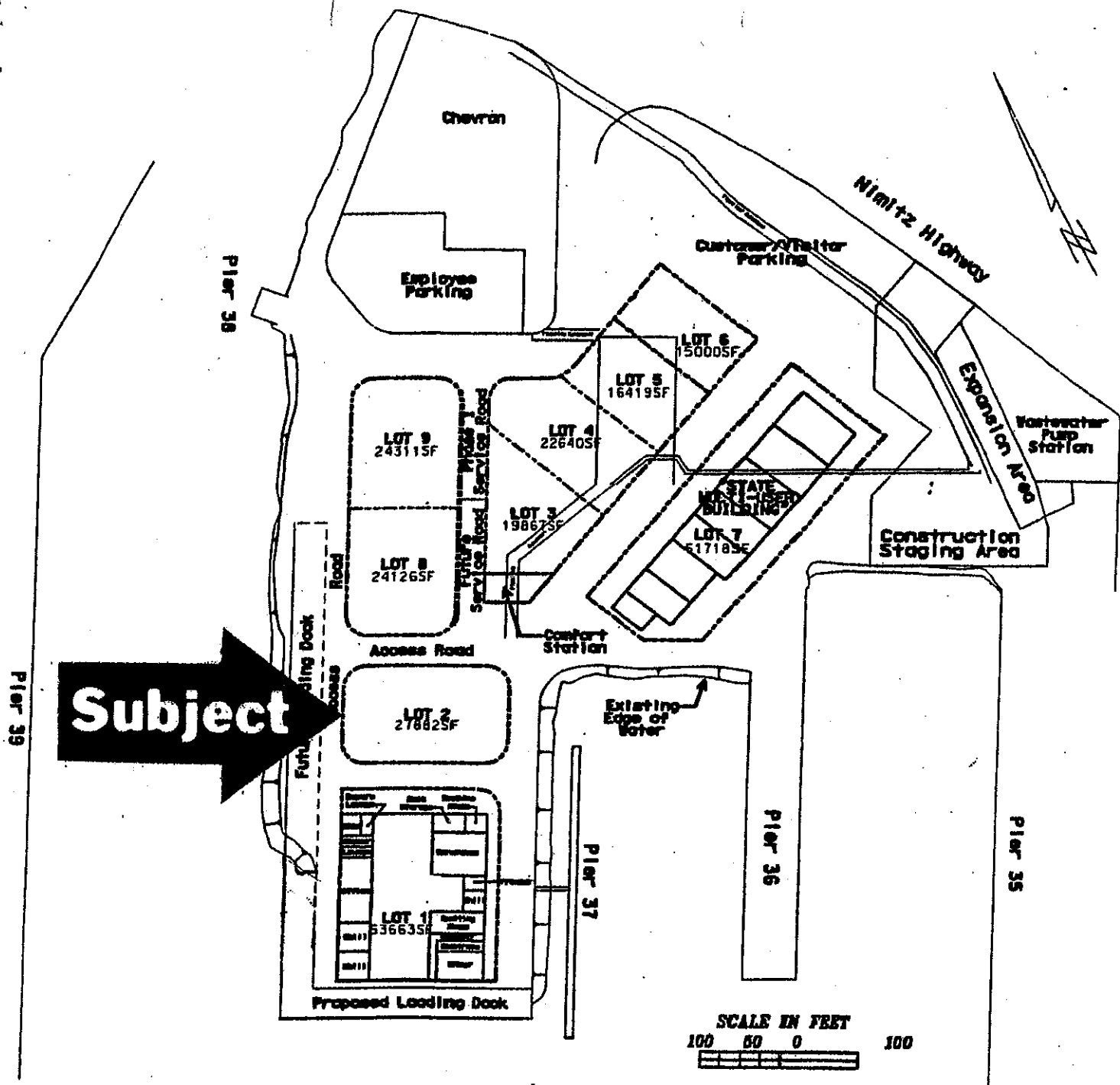


KAZU HAYASHIDA
Director of Transportation

APPROVED FOR SUBMITTAL:



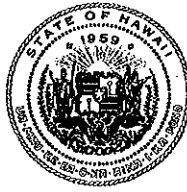
TIMOTHY E. JOHNS
Chairperson and Member



**DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION**

**DOMESTIC COMMERCIAL FISHING VILLAGE
HONOLULU HARBOR, ISLAND OF O'AHU**

EXHIBIT "A"



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

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IN REPLY REFER TO:

Board of Land and
Natural Resources
Honolulu, Hawaii

OAHU

REQUEST TO REDUCE THE PERFORMANCE BOND REQUIREMENT; HARBOR LEASE NO. H-03-18 ISSUED TO PACIFIC OCEAN PRODUCERS, LLC, UNIT FV2, DOMESTIC COMMERCIAL FISHING VILLAGE, PIER 38, HONOLULU HARBOR, IWILEI, HONOLULU, OAHU, TMK: 1ST/1-5-42 (PORTION)

BACKGROUND:

Harbor Lease No. H-03-18 ("Lease") was issued by direct negotiation on September 3, 2003 for a term of thirty-five (35) years for the construction, installation, operation, use, maintenance and repair of improvements necessary for the storage, processing, and wholesale distribution of seafood products and ancillary services and products, including but not limited to, the operation of a seafood restaurant and retail sales of seafood products and produce. The current annual rent is \$90,159.48 and is paid in monthly installments in the amount of \$7,513.29. Under the Lease, Pacific Ocean Producers, LLC ("Lessee") is required to post a performance bond equivalent to the annual rental amount. Currently the required bond amount is \$90,159.48 and the Lessee is in compliance.

REMARKS:

Lessee has requested for a waiver of the performance bond requirement as a result of the company's substantial financial investment in the construction of improvements. Paragraph 8 of the subject Lease required the Lessee to make substantial improvements to the lease area in an amount not less than two million dollars (\$2,000,000), including, without limitation, constructing and installing utility lines, equipment and appurtenances necessary for the purpose of the lease. As a result of the improvements made by Lessee their obligation to pay rent was waived during the first year of the lease.

Paragraph 46 of the subject Lease provides for a waiver or modification of the performance bond provision upon substantial compliance by the Lessee of the terms,

covenants, and conditions of the Lease. It also reserves the right of the State to reactivate or reimpose the bond if need be at any time throughout the term of the Lease.

Records indicate that in addition to the completion of the improvements constructed on the property, Lessee's lease payments have been received on a timely basis and the account is current. In view of the Lessee's good financial standing, Staff recommends the Board reduce the performance bond requirement to an amount equal to three (3) months rent or one quarter (1/4) of the annual rental amount then owed, subject to the condition that in the event that the Lessee violates any term or condition of the Lease in the future, then the Director of the Department of Transportation may, upon thirty (30) days written notice, reimpose the full performance bond requirement (equivalent to the anticipated annual rental payable for that year). The Lessee's failure to thereupon timely post the required bond as required shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

RECOMMENDATION:

That the Board reduces the performance bond requirement for Harbor Lease No. H-03-18 to an amount equivalent to three (3) months of rent or one quarter (1/4) of the annual rental amount then owed, further subject to the following:

In the event the Lessee violates any term or condition of the Lease in the future, then the Director of Transportation may, with thirty (30) days written notice, require that the full performance bond (equivalent to the anticipated annual rental payable for that year) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

Respectfully submitted,



GLENN M. OKIMOTO
Director of Transportation

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member

